

OPINION

On June 2, 1998, the Obion County Grand Jury indicted Defendant Chysea Myranda Marney and codefendant Letha Parchman for aggravated robbery. Defendant's case was subsequently severed from that of Parchman when Parchman failed to appear for trial. Following a jury trial on October 19, 1998, Defendant was convicted of robbery. After a sentencing hearing on November 30, 1998, the trial court sentenced Defendant as a Range I standard offender to a term of five years in the Tennessee Department of Correction. In addition, the trial court ordered the sentence in this case to run consecutively to a sentence that had previously been imposed in another case. Defendant challenges her conviction and her sentence, raising the following issues:

- 1) whether the evidence was sufficient to support her conviction; and
- 2) whether the trial court erred when it failed to impose alternative sentencing.

After a review of the record, we affirm the judgment of the trial court.

I. FACTS

Regina Thompson testified that on April 13, 1998, she was working at the Little General convenience store in Union City, Tennessee. At approximately 10:00 p.m., one heavysset female and one thin female entered the store together. Thompson could see that the heavysset female was wearing a coat with a hood.

Thompson testified that when the two women entered the store, the heavysset one went to the cooler and the thin one approached the counter and asked for cigars. Thompson then retrieved some cigars and when she turned around, she saw that the thin woman was pointing a gun at her. The two women then told Thompson to give them the money from the register. Thompson told the women how to open the register and the women took approximately \$100.00 from it. The women also

told Thompson to open the safe and when she complied, the women took a money bag with approximately \$300.00 in it. The women also took Thompson's jewelry and her purse that contained approximately \$600.00 in cash and payroll checks.

Thompson testified that she subsequently went to the police station and identified the coat that the heavysset woman had been wearing. Thompson was also shown a photographic line-up and she identified Parchman as the thin woman who pointed the gun at her. Thompson was shown a second photographic line-up and she identified Defendant as the heavysset woman who participated in the robbery. Thompson subsequently viewed a live line-up and she identified both Defendant and Parchman as the robbers. Thompson also made an in court identification of Defendant as one of the robbers.

Rosie Cannon testified that she was the owner of the coat that Thompson had identified. On April 13, 1998, Parchman came to Cannon's residence and asked to borrow the coat. After Cannon gave Parchman the coat, Parchman drove away in a vehicle with Defendant and Stephanie McFarland.

Cannon testified that later that night, Parchman, McFarland, and Defendant returned with the coat. When Cannon examined the coat, she observed that the pockets contained a gun and some money. Parchman then took possession of the gun and the money and left with McFarland and Defendant.

Sergeant Mike George of the Union City Police Department testified that during his investigation of this case, he obtained the coat from Cannon that was subsequently identified by Thompson. George also testified that during both the photographic and live line-ups, Thompson immediately identified Defendant as one of the women who robbed her.

Defendant testified that she did not participate in the robbery and instead, the robbery was committed by Parchman and McFarland. Defendant also denied that she was with Parchman and McFarland on the night of the robbery.

Defendant testified that she is five feet nine inches tall and she weighs 260 pounds. Defendant also testified that both Parchman and McFarland are approximately five feet five inches tall and weigh 120 to 130 pounds.

II. SUFFICIENCY OF THE EVIDENCE

Defendant contends that the evidence was insufficient to support her conviction.

When an appellant challenges the sufficiency of the evidence, this Court is obliged to review that challenge according to certain well-settled principles. A verdict of guilty by the jury, approved by the trial judge, accredits the testimony of the State's witnesses and resolves all conflicts in the testimony in favor of the State. State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994). Although an accused is originally cloaked with a presumption of innocence, a jury verdict removes this presumption and replaces it with one of guilt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with Appellant to demonstrate the insufficiency of the convicting evidence. Id. On appeal, "the [S]tate is entitled to the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom." Id. Where the sufficiency of the evidence is contested on appeal, the relevant question for the reviewing court is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). In conducting our evaluation of the convicting evidence, this Court is precluded from reweighing or reconsidering the evidence. State v. Morgan, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996).

Moreover, this Court may not substitute its own inferences “for those drawn by the trier of fact from circumstantial evidence.” State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990).

Under Tennessee law, “[r]obbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear.” Tenn. Code Ann. § 39-13-401(a) (1997). Defendant does not argue that the State failed to establish these elements of the offense. Rather, Defendant argues that the State failed to establish that she was one of the perpetrators of the robbery.

We conclude that when the evidence is viewed in the light most favorable to the State, as it must be, the evidence was clearly sufficient for a rational jury to find beyond a reasonable doubt that Defendant committed the offense of robbery. Thompson testified that one of the perpetrators of the robbery was a heavysset woman. Both Thompson and George testified that Thompson subsequently identified Defendant as the heavysset robber during both the photographic and live-line ups. In addition, Thompson identified Defendant at trial as one of the robbers. Further, Cannon testified that Defendant was with Parchman when Parchman borrowed her coat and later returned the coat with a gun and money in the pockets.

Defendant essentially argues that the evidence was insufficient to support her conviction because she testified at trial that Parchman and McFarland were the only perpetrators of the robbery. However, “[t]he credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the evidence are matters entrusted exclusively to the jury as the triers of fact.” State v. Cribbs, 967 S.W.2d 773, 793 (Tenn. 1998). The jury obviously accredited Thompson’s identification of Defendant and did not believe Defendant’s testimony. Defendant is not entitled to relief on this issue.

III. DENIAL OF ALTERNATIVE SENTENCING

Defendant contends that the trial court erred when it failed to impose alternative sentencing.

When an accused challenges the length, range, or manner of service of a sentence, this Court has a duty to conduct a de novo review of the sentence with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d) (1997). This presumption is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991).

In conducting a de novo review of a sentence, this court must consider: (1) the evidence, if any, received at the trial and sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) any statutory mitigating or enhancement factors; (6) any statement made by the defendant regarding sentencing; and (7) the potential or lack of potential for rehabilitation or treatment. Tenn. Code Ann. §§ 40-35-102, -103, -210 (1997 & Supp. 1999).

A. Community Corrections

Defendant initially contends that the trial court erred when it failed to order her to serve her sentence in the Community Corrections Program. However, Defendant was initially ineligible for placement in the Community Corrections Program. Under Tennessee law, offenders are not eligible for Community Corrections if they are convicted of a felony offense against the person or a violent felony. Tenn. Code Ann. § 40-36-106(a)(2), (3) (Supp. 1999). Robbery is both a crime against the person and a crime of violence. State v. Rhonda Lorraine Hanke, No. 03C01-9707-CC-00254, 1998 WL 695452, at *1 (Tenn. Crim. App., Knoxville, Aug. 20, 1998), perm. to appeal denied, (Tenn. 1999). However, an offender may still qualify under

the special needs provision of Tenn. Code Ann. § 40-36-106(c). Nevertheless, the Defendant has not exhibited such required needs.

B. Other Forms of Alternative Sentencing

Although Defendant's argument focuses mainly on Community Corrections, she also makes an assertion that if a Community Corrections sentence was not appropriate, she should have received some other form of alternative sentencing. Thus, we will address the trial court's decision not to impose any form of alternative sentencing.

Under Tennessee law, an especially mitigated or standard offender convicted of a Class C, D, or E felony is generally presumed to be a favorable candidate for alternative sentencing. Tenn. Code Ann. § 40-35-102(6) (1997). Because Defendant was convicted of a Class C felony offense, see Tenn. Code Ann. § 39-13-401(b) (1997), there was a rebuttable presumption that she was a favorable candidate for alternative sentencing.

When determining suitability for alternative sentencing, the sentencing court considers the following factors: (1) the nature and circumstances of the criminal conduct involved; (2) the defendant's potential or lack of potential for rehabilitation, including the risk that, during the period of the alternative sentence, the defendant will commit another crime; (3) whether imposition of an alternative sentence would unduly depreciate the seriousness of the offense; and (4) whether a sentence of confinement would provide an effective deterrent to others likely to commit similar crimes. Tenn. Code Ann. §§ 40-35-210(b)(4), -103(5), -103(1)(B) (1997 & Supp. 1999); State v. Bingham, 910 S.W.2d 448, 456 (Tenn. Crim. App. 1995).

The record indicates that the trial court based its denial of alternative sentencing on the seriousness of the offense, the need for deterrence, and Defendant's poor potential for rehabilitation.

Regarding the seriousness of the offense, this Court has stated that "[i]n order to deny an alternative sentence based on the seriousness of the offense, 'the circumstances of the offense as committed must be especially violent, horrifying, shocking, reprehensible, offensive, or otherwise of an excessive or exaggerated degree,' and the nature of the offense must outweigh all factors favoring a sentence other than confinement." Bingham, 910 S.W.2d at 454. Although Defendant's participation in the robbery of a store clerk at gunpoint was certainly a serious matter, we are unable to conclude that the circumstances of this offense meet the above standard.

Regarding deterrence, the general rule is that before a denial of alternative sentencing can be based on the need for deterrence, there should be some affirmative proof of the need for deterrence. See Ashby, 823 S.W.2d 169–70. In this case, the State failed to introduce any proof on the issue of deterrence. Thus, this was not a proper basis for a denial of alternative sentencing.

Notwithstanding the trial court's improper reliance upon the seriousness of the offense and the need for deterrence, we conclude that trial court was justified in denying alternative sentencing based on Defendant's poor potential for rehabilitation. The record indicates that before she committed the robbery in this case, Defendant was adjudicated as a juvenile for the delinquent act of aggravated robbery. In addition, Defendant was on bond for a second aggravated robbery when she committed the robbery in this case. Further, these three violent offenses were apparently committed within a ten month period. This conduct, particularly the commission of this violent offense while on bond for a previous violent offense, demonstrates a sustained intent to violate the law. Finally, the presentence report

indicates that Defendant has admitted to using alcohol and marijuana as a juvenile and using cocaine as an adult. This continuing disrespect for the law indicates that Defendant has an extremely poor potential for rehabilitation.

In short, we hold that based on Defendant's poor potential for rehabilitation, the denial of alternative sentencing was entirely appropriate in this case. Defendant is not entitled to relief on this issue.

Accordingly, the judgment of the trial court is AFFIRMED.

THOMAS T. WOODALL, Judge

CONCUR:

DAVID G. HAYES, Judge

JOE G. RILEY, JR., Judge